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FEDERAL COMMUNICATIONS COMMISSION
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ET Docket No. 93-7

COMMENTS OF TIME WARNER ENTERTAINMENT COMPANY, L.P.

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Dated: January 25, 1994

TABLE OF CONTENTS

	<u>PAGE</u>
SUMMARY	i
1. PROPOSALS FOR EXISTING EQUIPMENT	2
a. Supplemental Equipment	2
b. Scrambling the Basic Tier	4
c. Consumer Notification and Education	5
2. PROPOSALS FOR NEW EQUIPMENT	12
a. Decoder Interface Standard	12
3. CONCLUSION	17

SUMMARY

The Commission has advanced a two-part regulatory program designed to achieve greater compatibility between cable systems and consumer electronics products. The first part of the Commission's regulatory program seeks to improve compatibility between the existing installed base of consumer owned equipment and cable service. The second part of the Commission's program proposes new technical standards governing the manufacture of "cable ready" consumer electronics products and is designed to ensure that newly built and rebuilt cable systems provide service in a manner that is compatible with these products. While Time Warner generally supports the Commission's proposal for achieving compatibility, both with respect to existing and newly manufactured electronics equipment, modifications to some of the specifics of its proposal are warranted.

Initially, Time Warner supports the Commission's proposal both to require cable systems that scramble their signals to make available, by sale or lease, supplemental equipment to enable the operation of enhanced features and functions of consumer electronics equipment that makes simultaneous use of multiple signals, and to allow cable operators to charge for such equipment and its installation in accordance with the rate regulation rules for customer premises equipment. Any approach that would prohibit cable operators from charging separately for such equipment would be unfair to those subscribers who do not desire or need such equipment by requiring them to subsidize the cost of the equipment provided to others in the form of higher monthly services fees. Such an approach could also destroy the competitive market which has developed to provide such supplemental equipment. Consistent with the Commission's current rate regulation scheme, any such supplemental equipment provided that is used only to receive unregulated services must remain unregulated.

Time Warner also supports the Commission's proposal to prohibit cable systems from scrambling mandatory signals contained on the basic tier of cable service. Although scrambling of basic tier channels is rarely employed in practice, Time Warner believes that cable operators should be free to scramble discretionary services provided on the basic tier in certain circumstances where such scrambling can be justified by theft of service concerns. In the relatively few instances where theft of the basic service tier is a problem, a flat prohibition against scrambling any services provided on the basic tier would not only increase the cost to legitimate subscribers of providing cable service, it would also create enormous disincentives to the provisions of discretionary service on the basic tier and reduce the attractiveness of that tier to the subscribing public. Instead, the Commission should make available its waiver procedures to allow operators to justify scrambling discretionary basic services in unusual circumstances and also allow cable operators who are currently scrambling their basic tier, and who seek a waiver from the Commission in a timely fashion, to maintain the status quo during the pendency of any waiver proceeding.

Time Warner agrees with the Commission's proposal to impose consumer education and notification requirements on cable operators generally as a means of minimizing real and perceived compatibility problems. This requirement, however, should be strengthened by requiring similar consumer education material be provided to the purchasers of new consumer electronics equipment at the point of sale. It is precisely at the point of sale, when a purchase decision is made, that the need for such information is critical. Furthermore, the Commission's proposals to require cable operators to list specific models of remote control units that are compatible with the set-top devices employed by the cable system, to engage in a survey of local retailers, and to furnish their customers a list of retailers where those remote control devices can be purchased locally go far beyond what the 1992 Cable Act requires and unfairly burdens cable

operators with significant expenses while providing little, if any, real benefit to consumers. There are presently dozens of different makes and models of "universal" remote control devices and, short of a joint certification process established by the manufacturers of these devices and of set-top converter/descramblers, there is no practical or inexpensive way for each cable operator to comply with the Commission's proposal to compile a list of compatible devices. Furthermore, given the fact that these devices are readily available at most consumer electronics retail outlets, a listing of where those devices can be purchased by the consumer accomplishes nothing more than duplicating the information which subscribers already have in their local telephone books. The consumer education requirements of the Act would be better served if the consumer information provided by the cable operator is designed to inform subscribers of the types of remote controls available, the benefits and drawbacks of each, and whether an existing remote control device is needed in order to render the purchased device operative. Furthermore, cable operators should provide information that will enable subscribers to determine the make and model number of the set-top converter which is in their home and which will enable them to make a meaningful purchase decision with the assistance of a knowledgeable consumer electronics salesperson.

Finally, Time Warner supports the Commission's proposals with respect to newly manufactured equipment. The adoption of a decoder interface standard, which will allow the use of plug-in component descramblers with any television set equipped with such a interface connector, the standardization of cable system channel usage for the provision of broadcast video services through adoption of the IS-6 channel plan, and the improved receiver and tuner standards proposed for "cable ready" devices all represent a careful accommodation of the often competing concerns embodied in Section 624A of the 1992 Cable Act. Nevertheless, Time Warner believes that the Commission's proposal to prohibit cable operators from charging

separately for component descramblers to be used with the decoder interface is unwise from a policy standpoint and represents an unjustified departure from the Commission's existing rate regulations. To the extent that the cost for component descramblers must be included in the monthly rate for regulated services charged to all subscribers, subscribers utilizing set-top converter/descramblers will be forced to pay not only for their own equipment but also for the component provided to those subscribers who have purchased the new TVs equipped with the decoder interface. This is clearly not what Congress intended when it required that customer premises equipment be regulated on the basis of actual cost. Furthermore, the Commission's belief that its prohibition of a separate charge for component equipment would encourage cable operators to use "in the clear" signal delivery methods ignores the fundamental point that, as even the developers of these technologies have acknowledged, "in the clear" methods have not yet demonstrated the level of reliability, flexibility and cost effectiveness that would make their widespread deployment desirable or appropriate. Furthermore, these technologies limit the types and consumer friendliness of new services that are only now developing. The Commission's attempt to encourage "in the clear" technologies over other signal security approaches at this stage of technological development could well limit the diversity and acceptability of newly emerging services that the public would otherwise find desirable.

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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JAN 25 1994

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of:)	
)	
Implementation of Section 17 of)	
the Cable Television Consumer)	
Protection and Competition Act of 1992)	ET Docket No. 93-7
)	
Compatibility Between Cable Systems)	
and Consumer Electronics Equipment)	
)	

Time Warner Entertainment Company, L.P. ("Time Warner"), by its attorneys, hereby respectfully submits these comments in response to the Commission's Notice of Proposed Rulemaking in ET Docket No. 93-7 ("NPRM").¹ Time Warner is majority owned by Time Warner Inc., a publicly traded company, and consists principally of three unincorporated divisions: Time Warner Cable, which operates cable systems; Home Box Office, which wholly owns two premium television services (the HBO service and Cinemax) and is 50% owner of one non-premium service (Comedy Central); and Warner Bros., which produces and distributes motion pictures and television programs.

The following comments seek to address various issues raised by the Commission's NPRM. In general, Time Warner supports the proposals advanced in the NPRM which are designed to achieve greater compatibility between cable systems and various consumer electronics products. In some respects, however, Time Warner believes that the goals embodied in the 1992 Cable Act,² and in the Commission's "Report to Congress On Means For Assuring

¹Notice of Proposed Rulemaking in ET Docket No. 93-7, FCC 93-495, _____ FCC Rcd. _____ (released December 1, 1993).

²Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 ("1992 Cable Act").

Compatibility Between Cable Systems and Consumer Electronics," adopted October 5, 1993 ("Compatibility Report"), may actually be disserved by some of the specific proposals contained in the NPRM. Time Warner's constructive criticism of some of these proposals should not in any way detract from Time Warner's support of the general thrust of the Commission's approach for resolving compatibility issues.

1. Proposals for Existing Equipment

The Commission has proposed a number of requirements that are intended to provide consumers with greater compatibility in the near term between the use of the existing installed base of television receivers and VCRs and cable service. These requirements include: the provision of supplementary equipment that will enable cable subscribers to access and utilize the "enhanced" features of their TVs and VCRs in cases where a set-top converter/descrambler is also utilized; a prohibition on the scrambling of any services which are required to be included on the "basic" level of service as defined by the 1992 Cable Act; and the establishment of an ongoing consumer notification and education program. Each of these proposals will be discussed in turn.

a. Supplemental Equipment

The Commission is proposing that cable systems which scramble their signals make available, by sale or lease, supplemental equipment, such as bypass switches and set-top devices with multiple descramblers and/or timers, to enable the operation of enhanced features and functions of consumer electronics equipment that makes simultaneous use of multiple signals. The Commission proposes to allow cable systems to charge for this equipment and its installation in accordance with the rate regulation rules for customer premises equipment used to receive the basic service tier.³

³NPRM at ¶ 12.

Time Warner fully supports the Commission's proposal to require cable operators to provide supplemental equipment, upon request, to cable subscribers desiring improved compatibility. The use of decoder bypass switches, multiple descramblers and descramblers with built-in timers are all workable and acceptable methods for achieving virtually complete compatibility with the existing base of customer-owned consumer electronics equipment.⁴ Such equipment both allows subscribers to access all of the statutorily enumerated special functions of their television receivers and VCRs and fully protects the integrity and security of the cable system's programming against unauthorized reception, thus giving effect to both of the interests the statute seeks to protect.⁵ Furthermore, not only do most cable operators make such equipment available to subscribers upon request presently, but it has been Time Warner's experience that many subscribers are already aware of the ready availability of such equipment through third-party commercial vendors and frequently are able to purchase and install such equipment themselves without the need for cable operator assistance.

An important facet of the Commission's proposal with respect to supplemental equipment is that cable operators be allowed to charge for the equipment and its installation in accordance with the rate regulation rules for customer premises equipment used to receive the basic service tier.⁶ Pursuant to the 1992 Cable Act, the Commission has adopted rules which assure that charges for such equipment do not exceed the cable operator's actual cost to provide such

⁴Indeed, no other practical solution was advanced in the voluminous record compiled in response to the Notice of Inquiry issued previously in this proceeding.

⁵Section 624A(c)(1) of the 1992 Cable Act requires the Commission, in promulgating its regulations, to consider both the need to "minimize interference with or nullification of the special functions of subscribers' television receivers or video cassette recorders . . ." and "the need for cable operators to protect the integrity of the signals transmitted by the cable operator against theft or to protect such signals against unauthorized reception." 47 U.S.C. § 544A(c)(1)(A), (c)(1)(B).

⁶NPRM at ¶ 12.

equipment and which require cable operators to unbundle from their monthly service and separately charge for the equipment used to receive basic service.⁷ The Commission's proposal to allow cable operators to charge separately for such supplemental equipment consistent with these regulations correctly requires the additional costs of achieving compatibility to be borne by those individuals who both desire and are willing to pay for improved compatibility based on their own needs and preferences. Any approach that prohibits cable operators from charging separately for such equipment would be unfair to those subscribers who do not desire or need the supplemental equipment by making them subsidize the cost of the equipment provided to others in the form of higher monthly service fees. Such an approach could also destroy the competitive market which has developed to provide such supplemental equipment since subscribers would have no incentive to purchase their own equipment when they could get it "free" from the cable operator.

b. Scrambling the Basic Service Tier

The Commission has proposed to prohibit cable systems from scrambling signals on the basic tier of cable service. Furthermore, noting that cable systems often include discretionary additional channels on their basic tier, the Commission has requested comment on whether such non-mandatory signals should be exempted from the prohibition on scrambling basic tier signals.⁸

Time Warner believes that cable operators should be free to scramble discretionary services provided on the basic tier in certain instances where scrambling can be justified by theft of service concerns. In the vast majority of cases, scrambling of channels on the basic tier is

⁷47 C.F.R. § 76.923. Under the Commission's regulatory scheme, equipment used only to receive unregulated services remains unregulated. To the extent that any supplemental equipment provided to improve compatibility were used only to receive unregulated services, the 1992 Cable Act and the Commission's rate regulations require such equipment to remain unregulated.

⁸NPRM at ¶ 13.

neither necessary from a signal security standpoint, since the basic tier can usually be secured by physically disconnecting a home from the cable plant, nor desirable from an economic standpoint due to the capital costs required for the additional scrambling and descrambling equipment. However, there remain a limited number of situations, such as in certain areas where service is provided to a large proportion of seasonally occupied dwellings, where the impracticality and high cost of repeatedly connecting and disconnecting homes make scrambling a viable solution to prevent service theft. Signal theft hurts legitimate cable subscribers, who pay for their service and end up subsidizing the "free riders." Franchising authorities, which are deprived of franchise fees on the revenues lost from signal theft, and the cable operator, which incurs substantial additional costs in dealing with the problems caused by signal ingress and leakage resulting from unauthorized cable connections, also suffer from signal theft. In these circumstances, a prohibition on scrambling all services provided on the basic tier would increase the cost to subscribers of providing cable service, create enormous disincentives to the provision of discretionary services on the basic tier, and reduce the attractiveness of that tier to the subscribing public. A better solution would be to allow cable operators to utilize the Commission's waiver procedures to justify scrambling in unusual circumstances and thereby have the opportunity to preserve diversity for the entry level service tier. Furthermore, the Commission should allow cable operators who are currently scrambling their basic tier and who seek a waiver from the Commission in a timely fashion to maintain the status quo during the pendency of any waiver proceeding.

c. **Consumer Notification and Education**

The Commission is proposing to require that cable operators establish a consumer education program on compatibility and notify all subscribers at the time they first subscribe and at least once a year thereafter on compatibility issues. This program would include written notification explaining how the use of the set-top device may interfere with the subscriber's

ability to use the special features and functions of his or her television receivers and VCRs. Cable operators would also be required to inform subscribers that some models of TV receivers and VCRs may not be able to tune all channels offered by a cable system, to describe the types of channelization incompatibilities which may be encountered, and to offer suggestions for resolving these problems.⁹ Cable systems that offer remote control capability would also be required to inform their subscribers of the availability of compatible remote control units from third party sources. These cable systems would also be required to list specific models of remote control units compatible with their set-top devices and provide a second list of sources where these remote control units can be obtained in the local area. Cable operators would be required to update both lists on a yearly basis.¹⁰

Time Warner agrees with the Commission that better consumer education is needed to minimize real and perceived compatibility problems. Accordingly, Time Warner supports the Commission's proposal to require that cable operators periodically provide written material to their subscribers that outlines the types of compatibility problems that may arise and provides suggestions to resolve those problems. Time Warner, however, has two suggestions which it believes would improve the Commission's proposed consumer education program. First, Time Warner believes that such consumer education information should also be required to be provided to the purchasers of consumer electronics products at the point of sale. Second, the Commission's proposal to require cable operators offering remote control service to list specific models of compatible commercially available devices and locations where these can be purchased locally is unduly burdensome and unnecessary. Each of these points will be discussed in turn.

Initially, no consumer education program will be completely effective unless the type of information which the Commission proposes to require cable operators provide is also made

⁹NPRM at ¶ 15.

¹⁰NPRM at ¶ 16.

available at the point of sale of consumer electronics devices intended for connection to a cable system, such as TVs and VCRs. While an annual notification provided by a cable operator might be sufficient to educate existing cable subscribers as to potential compatibility problems before they purchase a new consumer electronics device, nearly 40 percent of all TV households presently do not subscribe to cable service.¹¹ The policies underlying the equipment compatibility provisions of the 1992 Cable Act would not be well served if a non-subscribing member of the public were to purchase a new piece of expensive consumer electronics equipment only to subsequently discover, when signing up for cable service, that the equipment purchased was not completely compatible with the cable system because, for example, it did not tune to all available cable channels. This potential problem could be remedied by requiring consumer education information, similar to that provided by cable operators, also be provided at the point of sale by all consumer electronics equipment manufacturers or retailers. Indeed, it is at the time that a purchase decision is made, be it the purchase of cable service or of a new TV or VCR, that the need for information is most critical. Accordingly, the Commission's proposed education program should be expanded to require the provision of such information at the point of sale of affected consumer electronics products as well as cable service.

Time Warner also believes that the Commission's proposal to require cable operators to list specific models of remote control units that are compatible with the set-top devices employed by the cable system, to engage in a survey of local retailers, and to furnish to their customers a list of the retailers where those remote control devices can be purchased goes far beyond what the 1992 Cable Act requires and is unduly burdensome and unnecessary.

Sections 624A(c)(2)(D)(ii) of the 1992 Cable Act requires only that cable operators who offer subscribers the option of renting a remote control unit "to specify the types of remote

¹¹National Cable Television Association: Cable Television Developments, November 1993 at p. 1-A.

control units that are compatible with the converter box supplied by the cable operator."¹² Although there are presently dozens of different makes and models of commercially available remote control devices that are compatible for use on cable systems, there are basically only two types of such devices: those that are programmed after purchase by the customer and those that are pre-programmed at the factory by the manufacturer.

The first type of remote control is programmed by placing it face to face with an existing remote control device. By punching in a certain sequence of keys, the programmable remote control device "learns" the infrared codes of the existing device. These devices can learn the coding sequence of virtually all existing remote control devices on the market and can duplicate virtually all of the functions of each of these devices. The major benefit of these devices is that all existing remote controls for the television receiver, VCR, stereo equipment and cable television equipment can be programmed into a single unit thereby eliminating the need for multiple remote control units. The major drawback to such devices is that the programmable remote control must be programmed using an existing device.

The second type of remote control is factory pre-programmed by the manufacturer with the infrared codes of the remote control devices which accompany a number of different consumer electronics products. Once purchased, the consumer must refer to a table, which accompanies the remote control, for the proper code to be programmed into the device to allow it to control a particular piece of consumer electronics equipment. Significantly, there is no standardization in the manner of pre-programming and the devices from different manufacturers will often use different programming codes to control the same piece of consumer electronics equipment. The main benefit of such devices is that an existing remote control is not needed to initially program the device. Thus, such devices can be used where the existing remote control has either been lost or has been rendered inoperative. The main drawback to such

¹²47 U.S.C. § 544A(c)(2)(D)(ii).

devices is that they will only work with that equipment whose infrared code has been pre-programmed at the factory. Furthermore, such devices usually are more limited as to the number of remote control devices which can be simultaneously imitated and in many cases will not replicate all of the functions of the remote control it is intended to replace.

The Commission's proposal to require cable operators to compile and list specific retailers and models of compatible remote control devices is misguided and unfairly burdens cable operators with significant expenses with little benefit to consumers. For example, in New York City alone where Time Warner provides cable service, there are tens of thousands of retailers that would have to be surveyed to determine whether or not they carried universal remote controls. Not only is this a costly and time-consuming process, but the resulting listing of those retailers which do carry such devices is likely to be the size of a small telephone book. Furthermore, because the list will be updated once a year, subscribers would still have to call particular retailers to see if a particular remote control device was carried and if so, whether it was currently in stock. Given that virtually all retailers of consumer electronics equipment are listed in the local phone book anyway, and that even a separate listing provided by the cable operator will not obviate the need for a phone call to determine whether the desired merchandise is in stock, any requirement that cable operators undertake the time and expense of compiling a redundant list is wasteful and serves no useful purpose. Indeed, a requirement that cable operators engage in costly and time-consuming surveys of businesses who carry such devices when that information is readily available in the local telephone book may create a significant incentive for cable operators to discontinue offering remote control devices altogether. In the end, unduly burdensome regulation will serve only to reduce, not increase, the choices available to the consumer.

Similarly, requiring cable systems to list specific models (rather than types as is called for in the statute) of commercially available remote controls that are compatible with set-top

devices employed by that system is not only impractical, it is entirely unnecessary. Subscriber programmed remotes are compatible with virtually all cable equipment and the subscriber does not need to be informed of specific model and manufacturer information from the cable operator. Clearly, it is the retailers of consumer electronics equipment who are most familiar with the various manufacturers and features of these devices and who are in the best position to assist the consumer in making a meaningful purchase decision -- its their business.

With respect to factory pre-programmed remote controls, the lack of a universally applied programming standard and the fact that pre-programmed remotes often duplicate only some but not all of the functions of the devices they are designed to replace would make it extremely difficult for each cable operator to determine the model of such remote controls that will function in a customer satisfactory manner with its cable system. Indeed, short of a joint certification process established by the manufacturers of cable equipment and the manufacturers of remote control devices, there is no practical way for individual cable operators to comply with this requirement. Furthermore, the imposition of a detailed listing requirement on cable operators is entirely unnecessary in light of the fact that it is in the best interests of the remote control manufacturers to list the types of converters their devices will operate with in the product tables that accompany their units.

The detailed listing requirement proposed by the Commission may actually be a disservice to the subscriber. Universal remote controls have gained in popularity not because they allow subscribers to avoid renting a remote control unit from the cable operator, but rather because they allow members of the public, both cable subscribers and non-subscribers alike, to consolidate their many incompatible remote control devices from their various consumer electronic products into a single remote control unit which can control all devices. Based on the listing of the particular remote control devices that are compatible with a particular cable system provided by the cable operator, a cable subscriber purchasing one of the listed units may find

that, although it works fine with the cable system, it does not work with his or her VCR or TV as well. In other words, compatibility with a particular cable system is only one of the factors which a consumer should take into account when choosing to purchase a particular universal remote control device.

Having the cable operator provide information as to the different types of devices available, their benefits and drawbacks, and how to determine the make and model of the particular set-top converter/descrambler found in that subscriber's home would provide exactly the type of information that a consumer would need to make the proper purchase choice with the assistance and expertise of a knowledgeable salesperson at a local consumer electronics retail outlet. It is precisely these salespeople who are most familiar with the use, operation, availability and features of the various products on the market, and who are in the best position to assure that the consumer makes a meaningful purchase decision. The public interest certainly would not be served by the imposition of requirements that are so burdensome that many cable operators, especially small cable operators, choose instead to discontinue offering a remote control option to their subscribers. In the end, this type of burdensome regulation would provide less consumer choice and significantly hamper the viability of the competitive market for such remote control devices.

Based on the foregoing, Time Warner strongly believes that the consumer information provided by the cable operator should be designed to inform the subscriber of the two different types of programmable remote controls available and the benefits and drawbacks of each, including the fact that with certain programmable remote control devices an existing remote control device will be required to render the purchased device operative. Because it is not uncommon for cable systems to have several different converter models in the field at any given time, cable operators should also provide information that will enable the subscriber to determine the make and model number of the set-top converter which is in their home. This will allow

those subscribers who purchase a factory pre-programmed remote control device to check the table which accompanies the remote control unit to ensure that the device will work with their cable converter. The ready availability of these devices at the retail level obviates the need for any listing of local manufacturers that carry such devices. The cable operator's notification should merely be required to inform subscribers that universal remote controls which will work with the cable system are available from most consumer electronics retailers.

2. Proposals for New Equipment

Recognizing that the limitations of existing consumer equipment and the current design of cable systems make it difficult to achieve compatibility in a seamless fashion, the Commission proposes to establish standards for new consumer electronics equipment and new and newly rebuilt cable systems that will ensure an effective interface between cable systems and consumer electronics equipment intended for use on those systems. The Commission has advanced three regulatory proposals with respect to new equipment. First, the Commission proposes to adopt a decoder interface standard which would allow the use of plug-in component descramblers with any television set equipped with a decoder interface connector. Second, the Commission proposes to standardize cable system channel usage through adoption of the IS-6 channel plan that is now being adopted by the American National Standards Institute. Third, the Commission is proposing improved receiver and tuner standards which will be applicable to all devices which are intended to be connected to a cable system. Time Warner generally supports all of these proposals as necessary to achieve the compatibility goals established by Congress. Time Warner believes, however, that some small though significant modifications are needed in the implementation of the decoder interface requirements.

a. Decoder Interface Standard

The Commission proposes to require that all television sets manufactured after a certain date which are marketed as "cable ready" or which are intended for connection to cable service

be equipped with a decoder interface based on a modified version of the EIA/ANSI 563 standard.¹³ Cable operators will be required to either employ "in the clear" signal delivery technology or to provide component descramblers/decoders and/or any additional equipment that might be needed to process scrambled or digital video services through consumer electronics products that are equipped with the decoder interface.¹⁴ The Commission proposes to require cable operators to provide component descramblers/decoders and any related equipment to subscribers without a separate charge for either the equipment or its installation by classifying the component descrambler and any other equipment used with the decoder interface connector as elements associated with the cable network rather than customer premises equipment.¹⁵

Time Warner fully supports the Commission's proposal to adopt a decoder interface standard as the primary means to achieve the compatibility goals established by the 1992 Cable Act. By eliminating the need for an external tuner, the decoder interface renders scrambling transparent and enables full utilization of all enhanced functions built into the consumer electronics equipment containing such an interface. The Commission's proposal to require cable operators to provide component descramblers to all TVs and VCRs equipped with the decoder interface will ensure that "cable ready" TVs and VCRs will be purchased by consumers who desire improved compatibility. At the same time, the decoder interface protects the signal security concerns of cable operators by allowing them to continue to utilize the scrambling technology which has been proven to be the most efficacious at deterring and/or minimizing theft of service. Thus, the decoder interface accommodates all of the concerns embodied in Section 624A of the 1992 Cable Act.

¹³NPRM at ¶ 20.

¹⁴NPRM at ¶ 29.

¹⁵NPRM at ¶ 30.

Notwithstanding the foregoing, Time Warner believes that the NPRM's proposal should be modified to allow cable operators to classify and recover the cost of component descramblers as customer premises equipment in accordance with the Commission's rate regulations. The NPRM itself has acknowledged that its "proposal to require cable systems to provide subscribers with component descramblers at no separate charge departs from our rate regulations regarding unbundling of charges for installation and lease of equipment used to provide service to subscribers."¹⁶ The reason given by the NPRM for this departure from the Commission's rate regulation requirements is that by requiring cable operators to recover the cost of component descramblers through subscriber revenues from regulated services rather than as a separate equipment charge, consumers will be encouraged "to acquire and use new TV receivers and VCRs that are equipped with the decoder interface. By avoiding a source of incremental revenue, it may also encourage cable operators to use signal delivery methods that provide all purchased channels simultaneously, in the clear."¹⁷

This reasoning, however, does not withstand careful scrutiny for several reasons. By prohibiting cable operators from charging separately for the cable operator supplied component descramblers to be used with the decoder interface, the Commission's rules will force certain cable subscribers to subsidize the equipment purchases of others through higher rates for cable service. Furthermore, the Commission's belief that a prohibition on such charges will encourage cable operators to utilize "in the clear" technologies is unfounded. Indeed, this aspect of the Commission's proposal will only serve to undercut support for and the benefits achieved by the use of the decoder interface to achieve universal compatibility. Each of these points is discussed in turn.

¹⁶NPRM at ¶ 30 [citation omitted].

¹⁷NPRM at ¶ 30.

The Commission's proposal to require the cost of component descramblers to be recovered through subscriber revenues from regulated services¹⁸ is not only inconsistent with its comprehensive scheme for rate regulation, but it is also unfair to those subscribers who choose not to or cannot afford to purchase a new TV set equipped with the decoder interface. Subscribers who continue to utilize their existing television sets with integrated set-top converter/descramblers and associated equipment to receive their regulated services will continue to pay for the cost of that equipment through a separate equipment charge in accordance with the Commission's rate regulations. By requiring the cost for the component descramblers to be included in the monthly rate for regulated services charged to all subscribers, subscribers utilizing integrated set-top devices will also be forced to pay not only for their own equipment, but also for the component equipment provided to those subscribers who have purchased the new TVs equipped with the decoder interface. In effect, the Commission's proposal would require those subscribers who cannot afford to or who do not need to purchase a new television set to subsidize the equipment purchases for those subscribers who are affluent enough to be able to afford the luxury of upgrading their consumer electronics equipment. Clearly this is not what Congress intended when it required that equipment be regulated on the basis of actual costs.

The Commission's belief that its prohibition of a separate charge for component equipment would encourage cable operators to use "in the clear" signal delivery methods is entirely without foundation and ignores the fundamental point that "in the clear" technologies, such as broadband descrambling, traps and interdiction, have not evolved to the point where they have demonstrated the level of reliability, flexibility and cost effectiveness that would be

¹⁸NPRM at n. 27. Although suggesting that the cost of component equipment can be recovered in the monthly service rates, the Commission has offered no concrete suggestions as to how such rate adjustments may be effectuated. Until a methodology is presented which will allow cable operators to recover their actual cost for the installation and lease of that equipment as mandated by § 623(b)(3) of the 1992 Cable Act, 47 U.S.C. § 543(b)(3), the Commission has failed to justify any departure from its established regulations.

required of any industry standard for signal security and delivery. Furthermore, the practical limitations of "in the clear" technologies do not allow for newly emerging services, such as multichannel impulse pay-per-view and near video on demand to be offered without making compromises that diminish the attractiveness of the service to the consumer, if the service can even be offered at all. In modern, high capacity cable systems offering or experimenting with new services requiring on-screen displays, forced tuning and a large number of secure channels, in the clear technologies, although compatible with certain existing consumer electronics equipment, may not be a viable technology choice. Indeed, Scientific Atlanta, the only active supplier of interdiction equipment to the cable industry, and Multichannel Communications Sciences, Inc., the entity which is at the forefront of efforts to develop multichannel broadband descrambling, both acknowledged in response to the Commission's Notice of Inquiry in this proceeding that implementation of their technologies must be evaluated on a case-by-case basis and that forced widespread deployment of these technologies would be inappropriate.¹⁹

The present limitations of in the clear technologies is inherently conceded by the Commission in its recognition that the decoder interface connector represents "the most practical solution for resolving the major problems of compatibility between cable systems and the special functions of consumer electronics equipment"²⁰ Given this recognition, and the Commission's acknowledgment that the decoder interface connector "offers both a means for addressing the major current compatibility issue and a path for accommodating the next phase of technology expected to be introduced in the relatively near future [e.g., digital television],"²¹ the Commission's stated preference for "in the clear" technologies makes little sense. To the

¹⁹Comments of Scientific Atlanta at pp. 5-6. Comments of Multichannel Communications Sciences, Inc. at p. 2.

²⁰NPRM at ¶ 33.

²¹NPRM at ¶ 32.

extent that digital television and the advanced services offered on the new information super highway consist of more than just passive video signals and require subscriber interaction, both to choose services and to manipulate data, some sort of sophisticated interface will be required. The beauty of the decoder interface approach is that it will allow for customized components to be developed to support the introduction of these new services utilizing existing television or VCR receivers. As the components become more sophisticated, however, they are likely to become more expensive, at least in the short run. To the extent that cable operators are not allowed to recover the costs associated with providing component equipment, they are unlikely to invest in customized equipment needed to introduce new and experimental services. As a result, many new services will never have a chance to develop and gain consumer acceptance. This result is clearly at odds with two of the main policies underlying the 1992 Cable Act, which are to:

- (1) promote the availability to the public of a diversity of views and information through cable television and other video distribution media; [and]
- (2) rely on the marketplace, to the maximum extent feasible, to achieve that availability. . . .²²

Allowing subscribers who desire new services to pay for the equipment that will support these services is preferable by far to approaches either that require all subscribers to bear the cost of services desired only by some, or that will stifle the development of new services which may otherwise prove popular by discouraging investment in the development of equipment needed to support such services.

3. Conclusion

Time Warner applauds the efforts of the Commission and its staff to resolve the difficult issues raised by the equipment compatibility provisions of the 1992 Cable Act in a manner that

²²1992 Cable Act, § 2(b)(1)-(2).

is fair to the cable industry, consumer electronics industry and the consumer. While supporting the general thrust and approach of the Commission's proposals, Time Warner has expressed concerns that certain minor, though significant, aspects of the Commission's proposed regulatory scheme could prove unduly burdensome or costly and might result in unintended consequences that would ultimately narrow rather than expand service diversity and consumer choice. Time Warner respectfully requests that the Commission give serious consideration to these concerns.

Respectfully submitted,

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Dated: January 25, 1994

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